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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 96-261
International Settlement Rates	)	

SUPPLEMENTAL COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation on behalf of its affiliated telecommunications companies

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SUMMARY

GTE Service Corporation, on behalf of its affiliated telecommunications companies (collectively "GTE"), supports the development of worldwide competition in the telecommunications industry and considers such competition the best way to reduce international accounting rates. GTE observes that, even since the March 31, 1997 filing of Reply Comments in this proceeding, the international telecommunications environment has changed rapidly in anticipation of global competition in basic telecommunications services, with dramatic impact on accounting rates. GTE expects that trend to continue. Accordingly, GTE reiterates the points made in its earlier submissions regarding reliance on market forces, which are incorporated herein by reference. The Commission should refrain from prescribing international settlement rates in a manner that appears both to exceed the Commission's jurisdiction under the Communications Act and to be inconsistent with U.S. international obligations, prominently including the agreement of the Group on Basic Telecommunications ("GBT" or "GBT agreement").

Specifically, GTE questions the need to prohibit U.S. carriers from originating or terminating U.S. switched traffic over their U.S. facilities-based private lines until all settlement rates for the destination country are within the benchmark settlement

ranges proposed in this proceeding. The proposal appears unnecessary. Any feared competitive harm to U.S. markets flowing from "one-way by-pass" has not been definitively linked to above-cost accounting rates or, even, to distortion of competition. Moreover, as the Commission acknowledges, one-way bypass is much less likely to occur once the GBT takes effect. The Commission should not attempt to remedy a hypothetical problem by raising a new barrier to international telecommunications services of doubtful consistency with U.S. obligations under the GBT. Rather, it should impose a reporting requirement sufficient to ensure detection of actual behavior with anti-competitive impact. Reasonable measures to detect, deter and remedy such actions would comport with U.S. GBT obligations.

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I. THE GBT WILL OPEN MARKETS AND ACCELERATE THE WORLDWIDE REDUCTION OF SETTLEMENT RATES.

The GBT agreement, signed on February 15, 1997 and scheduled to enter into force on January 1, 1998, commits the United States and 68 other members of the World Trade Organization ("WTO") to open their telecommunications markets to foreign competition in exchange for access to other GBT signatories' markets. The GBT is an annex to the General Agreement on Trade in Services ("GATS"); it is a multilateral trade agreement based on premises quite different from the market-by-market, route-by-route reciprocity underlying the Commission's "effective competitive opportunity" and "equivalency" tests for foreign access to the U.S. market. The GBT is primarily enforced by disciplines within the WTO, not unilaterally by GBT signatories or other WTO Members. The GBT is designed to *liberalize* international trade in telecommunications services, but not necessarily to *harmonize* WTO Members' telecommunications policies beyond the specific commitments in the agreement.

For at least 57 countries, the GBT includes a Regulatory Reference Paper obligating signatories to maintain measures to prevent anti-competitive practices. It does not, however, elevate such "competitive safeguards" above the fundamental purpose of the agreement: the opening of international telecommunications markets. Moreover, the U.S. GBT commitment is not conditioned on other countries' insistence

that their carriers agree to benchmark settlement rates unilaterally determined by the Commission.

Although the GBT has not yet entered into force, it has already had a substantial effect on international accounting rate policies. Announcement of the GBT has demonstrably accelerated the trend toward lower settlement rates. An informal "experts group" operating under the auspices of the International Telecommunication Union's ("ITU's") Study Group III project has proposed that settlement rates be *immediately* reduced five percent to ten percent on a global basis and, in all but a few cases, to a level below US$ 0.25 per minute.[1] The Commission's recent notice of proposed rulemaking,[2] itself observes that "by opening . . . foreign markets to

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[1] ITU, Report of the Informal Expert Group on International Telecommunication Settlements, at 4-5 (April, 1997). The report also recognizes, as GTE noted in its prior comments, that developing countries will need transition periods before they can reach "cost-based" financial arrangements. Id. at 5. The Commission should not underestimate the economic dislocation (or the political consequences) associated with the rapid rebalancing of tariffs. Such rebalancing is a necessary consequence of the loss of international settlement revenue when carriers move toward cost-based settlement rates. In the Dominican Republic, a recent announcement that consumer telephone service subscriber rates would rise by 67 percent, from US$ 6.00 to US$ 10.00 per month, was a factor in recent civil unrest involving an attack on the headquarters of the largest telecommunications service provider.

[2] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket. No. 97-142, FCC No. 97-195 (June 4, 1997) ("WTO NPRM").

competition in international services, the [GBT] will exert considerable pressure for reform of the international accounting rate system."[3]

Under the Commission's "Flexibility Order"[4] allowing alternative settlement arrangements, there has been a flurry of activity to implement dramatically lower settlement rates, for instance in Australia, the Dominican Republic and Japan. The opening of markets under the GBT and the Commission's proposal to allow alternative settlement arrangements for all WTO countries will further stimulate rapid reduction in settlement rates.

In light of the ongoing and increasing downward pressure on accounting and settlement rates, GTE respectfully suggests that, in both this proceeding and the WTO NPRM, the Commission underestimates the effect of market forces on settlement rates and, therefore, proposes "safeguards" against competitive harms that are, at present, merely speculative.

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3 Id. ¶ 50.

4 See Regulation of International Accounting Rates, CC Docket. No. 90-337 Phase II, FCC 96-459 (Dec. 3, 1996), recon. pending ("Flexibility Order").

II. PROHIBITING PRIVATE LINE CARRIAGE ON ROUTES WITH "ABOVE-BENCHMARK" ACCOUNTING RATES RAISES THE SAME JURISDICTIONAL AND TREATY COMPLIANCE ISSUES AS THE REST OF THE BENCHMARK NPRM.

The WTO NPRM is essentially aimed at re-evaluating the Commission's criteria and procedures for decisions about foreign access to the U.S. telecommunications market. That re-evaluation is required, in large measure, because the Commission's current rules and procedures, including the "effective competitive opportunity" ("ECO") and "equivalency" tests, are inconsistent with certain U.S. market opening commitments in the GBT. The WTO NPRM is subject to separate comments; the instant proceeding has been re-opened because of the proposal to prohibit U.S. carriers from originating or terminating U.S. switched traffic over their facilities-based private lines until all settlement rates for the destination country are within the benchmarks established by the Commission. Without repeating them in detail, GTE reiterates its doubts about the GBT-consistency of much of this proceeding.[5] It also reiterates its serious doubts about the Commission's domestic jurisdiction effectively to prescribe

[5] See Comments of GTE Service Corporation, In the Matter of International Settlement Rates, IB Docket. No. 96-261, at 28-33 (Feb. 7, 1997).

accounting rates and whether any such prescription can be reconciled with binding U.S. treaty obligations to the ITU.[6]

III. THE U.S. MARKET CAN BE SAFEGUARDED BY LESS INTRUSIVE MEANS, CONSISTENT WITH U.S. OBLIGATIONS UNDER THE GBT.

The proposed prohibition raises a barrier to trade in telecommunications services that is apt to fall disproportionately on foreign carriers and their affiliates. Although the Commission states its concern that above-cost accounting rates[7] and access to private lines could facilitate one-way bypass, no case is made that competitive distortion will, in fact, occur. The Commission does not establish that competitive distortion will result from carriers with access to private lines having above-cost settlement rates. There would be no competitive harm, for instance, if the destination country gave U.S. carriers access to private lines for switched services. In such a

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[6] See, id. at Appendix A, citing, inter alia, International Telecommunications Union, International Telecommunications Regulations, Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88) arts. 1.5, 6.2.1(Melbourne, 1988).

[7] As noted in previous comments, GTE does not necessarily accept the Commission's methodology for determining other carriers' costs, or its right to make such determinations unilaterally. GTE questions the Commission's decision to group together, for the purposes of establishing benchmarks, different countries with demonstrably different cost structures.

setting, there would be no opportunity for one-way bypass, regardless of the accounting or settlement rates on the route. This is exactly the situation that should obtain under the GBT, once it is implemented.

Similarly, the Commission claims only that one-way bypass *could* distort competition, not that it has done so or necessarily will.[8] Thus, the Commission's proposed prohibition would impose an immediate and actual barrier to trade in services to prevent a speculative harm to U.S. competition. Moreover, the criterion used for evaluating the likelihood of harm – above-cost accounting rates – will not, of itself, distort U.S. competition.

At an absolute minimum, the prohibition should be limited to those instances where one-way bypass could actually occur. As currently written, the prohibition would apply even if a foreign market would meet equivalency test criteria, that is, if U.S. carriers had ample access to private lines for switched services. In such a situation, there would be no one-way bypass (and no possibility of competitive harm), but there could well still be above-cost (or above-benchmark) settlement rates. Thus,

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[8] As noted in the WTO NPRM, the Commission's prior determination that one-way bypass is not in the U.S. public interest was based on the potential impact on U.S. net outpayments and prices paid by U.S. consumers or ratepayers. See WTO NPRM ¶ 49, citing Regulation of International Accounting Rates, 7 FCC Rcd 559 (1991).

the Commission's proposed "competitive safeguard" is more burdensome than necessary and not tailored to the (hypothetical) competitive harm, in possible violation of Article VI:4 of the GATS. It would also likely expose the United States to claims that benefits other Members reasonably expected to accrue under the GBT, as part of the GATS, are being nullified or impaired as a result of the Commission's excessively broad view of its mandate to prevent anticompetitive behavior.[9]

It appears that the Commission intends its prohibition on private line services to apply only where one-way bypass could actually occur, although that is not what the proposal literally provides. Re-establishing the criterion of reciprocal market access, however, risks re-establishing the equivalency test, which would most likely violate MFN obligations. Under the GBT, WTO Members that made no market opening commitment essentially get to "free ride" on the benefits of the agreement. That risk was presumably known and accepted by the United States in signing the agreement in view of the relatively tiny proportion of world telecommunications trade such markets

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[9] See General Agreement on Trade in Services, Art. XXIII:3 ("GATS").

represent. For countries that have violated their GBT commitments, the primary remedy is not unilateral retaliation, but WTO dispute resolution (after consultation).[10]

It appears likely, however, that a less burdensome, more reasonable means could be found to protect against the potential competitive distortion of one-way bypass on routes with above-cost settlement rates. It would seem more reasonable (and probably GBT-compatible) to require U.S. facilities-based carriers to furnish the Commission – on a confidential basis, if necessary – sufficient information about traffic volumes and revenue on private lines for switched services and any impact on settlement and prices to permit the Commission to make a judgment about *actual* (or attempted) competitive harm resulting from one-way bypass. Requiring such information would be within the Commission's jurisdiction and could be structured not to raise MFN or national treatment ("NT") problems under the GBT. Moreover, measures taken to remedy actual competitive harm would be more clearly consistent with the competitive safeguards provisions of the GBT than the current proposal.[11] The link between above-

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[10] See GATS, Art. XXIII; Understanding on Rules and Procedures Governing the Settlement of Disputes, ¶¶ 3.7, 4, 5.

[11] Although these supplemental comments are limited to the proposal in the Commission's June 4 public notice (DA 97-1173), the less burdensome remedy suggested herein should also be applied to resold private lines for switched service.

(Continued...)

cost settlement rates and competitive harm is simply too attenuated to support the categorical, preemptive prohibition that the Commission has proposed.

CONCLUSION

In conclusion, GTE reiterates the doubts expressed in its earlier filings regarding the Commission's jurisdiction to prescribe settlement rates and the Benchmark NPRM's consistency with binding obligations to the ITU and the WTO. With respect to the specific proposal to prohibit U.S. facilities-based private line carriers from originating or terminating U.S. switched traffic until all settlement rates in the jurisdiction at the foreign end of the private line fall within the Commission's benchmarks, GTE considers the proposal to be unnecessary, as the marketplace created by the GBT will almost certainly succeed in driving down accounting and settlement rates. Moreover, GTE suggests that the proposal, as written, is unnecessarily broad and burdensome in that there is no demonstrated link between above-cost settlement rates and competitive distortion within the U.S. market that cannot be detected and deterred by much less intrusive means, means that are less likely to be considered a violation of the GBT.

(...Continued)
See International Settlement Rates, 62 Fed. Reg. 32,971 (FCC June 17, 1997) (proposed rule; request for supplemental comments).

GTE respectfully suggests that the Commission could effectively detect and prevent competitive distortions by requiring U.S. carriers to furnish sufficient information about traffic volumes and pricing on private lines for switched services to permit the Commission to detect and act against any actual or attempted use of such lines for anticompetitive purposes.

Respectfully submitted,

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